

No. 22 of 1943

10

IN THE HIGH COURT OF AUSTRALIA.

Gray

v.

Thre Finance Pty Ltd

Oral

REASONS FOR JUDGMENT.

ORIGINAL

Delivered at Sydney
on Wednesday, 25th August, 1943.

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A. H. PETTIFER, ACTING GOVT. PRINT.

IN THE HIGH COURT OF AUSTRALIA)
NEW SOUTH WALES REGISTRY)

GRAY v. HIRE FINANCE COMPANY

25th. August 1943.

JUDGMENT

His Honour the Chief Justice:

The only matter which calls for decision now upon this appeal is whether there was evidence to justify the finding of the learned Judge in Bankruptcy that certain commutators were left by the debtor in the custody of the petitioning creditor, it being agreed between Knox, who was acting on behalf of the creditor, and the debtor that these articles should be sold on behalf of the debtor and the proceeds applied in satisfaction of a loan made by the petitioning creditor to the debtor.

Two views were, I think, open upon the evidence, one that the commutators were left by the debtor with the creditor upon an arrangement that if the debtor did not pay the debt the creditor should have the right to realise the commutators and pay himself out of the proceeds. In those circumstances there would be a security upon the commutators and by section 55 of the Bankruptcy Act it is required that a secured creditor shall either surrender or value his security. That was not done in the present case.

The other view open on the evidence, it appears to me, is this, that the creditor should be entitled to sell the commutators from time to time, whether or not the loan had become due and whether or not there had been default in repayment of the loan. Upon this view the deposit of the commutators would amount to a payment on account in kind as distinct from the giving of security for the repayment of the debt. In my opinion either view is open on the evidence. The learned Judge believed the evidence given on behalf of the creditor and the onus here is upon the appellant to satisfy the Court that the decision was wrong.

I am not satisfied that the decision was wrong. There

was, I think, evidence upon which it might fairly be found that the position was as stated by the learned Judge, and therefore in my opinion the appeal against the order of sequestration should be dismissed.

ORDER: Appeal dismissed with costs.

*This acceding to my recollection
is an accurate report — but
I have not seen it before today.*

W. Hartman

21-0-7963

IN THE HIGH COURT OF AUSTRALIA)
NEW SOUTH WALES REGISTRY)

GRAY v. HIRE FINANCE COMPANY

25th. August 1943

JUDGMENT

His Honour Mr. Justice Rich:

I agree that there was evidence
for the learned Judge's finding and that the appeal should be
dismissed.

HIS HONOUR Mr. Justice Starke:

I agree.